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OFFICE OF PETITIONS

In re Application of :
Guyton, et al. :
Application No. 10/799,117 : ON PETITION
Filed: March 12, 2004 :
Attorney Docket No. 30011.24987 :
For: SELF-CONTAINED AIR LIFTED
SEAT APPARATUS

This is a decision on the petition under 37 CFR 1.181, filed May 14, 2008, requesting that the Office withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any reconsideration petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed August 16, 2007 (certificate of mailing date August 14, 2007), and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on October 15, 2007. See MPEP 1215.04.

Petitioners argue that because a timely and proper response to the May 14, 2007 final Office action was filed, that the holding of abandonment should be withdrawn.

37 CFR 41.37(a) provides 2 months from the date of the notice of appeal for the appellant to file an appeal brief and the appeal brief fee set forth in 37 CFR 41.20(b)(2). Petitioners are informed that the application became abandoned because an appropriate follow-up submission to the August 16, 2007(certificate of mailing date August 14, 2007) Notice of Appeal was not filed within an extendable two month period from the Notice of Appeal's filing. It was petitioners responsibility to file an appropriate follow-up submission to the August 16, 2007(certificate of mailing date August 14, 2007) Notice of Appeal. Petitioner did not do so.

The petition to withdraw the holding of abandonment under 37 CFR 1.181 is DISMISSED. A Rule 181 petition is feeless. The \$400.00 petition fee will be credited to deposit account no. 50-4538.

Petitioners are encouraged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was “unavoidable.” This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b).

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

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